



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/092,385	03/05/2002	Jeffery J. Sheldon	IDEV:020US	8270

7590

06/29/2005

FULBRIGHT & JAWORSKI L.L.P.
A REGISTERED LIMITED LIABILITY PARTNERSHIP
SUITE 2400
600 CONGRESS AVENUE
AUSTIN, TX 78701

EXAMINER

PANTUCK, BRADFORD C

ART UNIT

PAPER NUMBER

3731

DATE MAILED: 06/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/092,385	Applicant(s) SHELDON, JEFFERY J.	
	Examiner Bradford C. Pantuck	Art Unit 3731	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 May 2005.
 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,12,14 and 25 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) ☒ Claim(s) 12 and 14 is/are allowed.
 6) ☒ Claim(s) 1,2 and 25 is/are rejected.
 7) ☐ Claim(s) _____ is/are objected to.
 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input checked="" type="checkbox"/> Other: <u>Attachment A</u> |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

1. Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S.

Patent No. 4,081,885 to Shank. Shank discloses a method of making a textile product. Figures 11 and 13 clearly show multiple diagonal strands intersecting in the middle of each respective figure, and creating four sections. Also, as shown in these figures, Shank shows passing a non-radio opaque securing material 70 through all four sections [column 4 lines 46-60]. The material 70 is bent and forms a “clove hitch” [column 4 line 55].

2. Claim 25 is rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,409,750 B1 to Hyodoh et al. Hyodoh discloses in Fig. 28 an implantable device, and describes it in column 20 line 62 to column 21 line 13. Figure 28 has been marked up by the Examiner to show how the prior art reference reads on the claimed invention [Attachment A]. Securing material 510 can be properly called a “securing material” because it attaches to the implant at location 550 [column 21 lines

2-4]. Securing material 510 passes through sections 2 and 3, as labeled in Attachment

A. The securing material forms a helix, which is necessarily bent (cylindrically).

Securing material 510 has one portion ("segment") in section 2 that is joined together with another portion ("segment") located in section 3, since they both form parts of one long wire-like member.

Allowable Subject Matter

3. Claims 12 and 14 are allowed.

Conclusion

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Response to Arguments

Art Unit: 3731

5. Applicant's arguments, see "REMARKS", filed 05/06/2005, with respect to the rejection(s) of claim(s) 1, 2, 7, 12, 14, 19, and 25 under 35 U.S.C. 102(e) with U.S. Patent No. 6,340,367 to Stinson have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of U.S. Patent No. 4,081,885 to Shank and U.S. Patent No. 6,409,750 B1 to Hyodoh et al.
6. Particularly, Applicant's arguments are found persuasive with respect to the rejection under 35 U.S.C. 103(a) made in the Non-Final Office Action. Applicant argues in page 1 of "REMARKS", filed 05/06/2005:

Further, these claims are nonobvious over Stinson and Ashley. The Office states that the need "to quickly form strong knots" provides the motivation to look to Ashley. However, no such motivation exists when viewing the references as a whole. Stinson is focused exclusively on radio opaque materials, and not on securing the intersection of two crossed strands.

Applicant is correct in the assertion that Stinson is concerned primarily with putting radiopaque materials on a stent, not securing the intersection of two crossed strands.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bradford C. Pantuck whose telephone number is (571) 272-4701. The examiner can normally be reached on M-F 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan Nguyen can be reached on (571) 272-4963. The fax

Art Unit: 3731

phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

BCP

BCP

June 13, 2005


ANH TUAN T. NGUYEN
SUPERVISORY PATENT EXAMINER

6/24/05

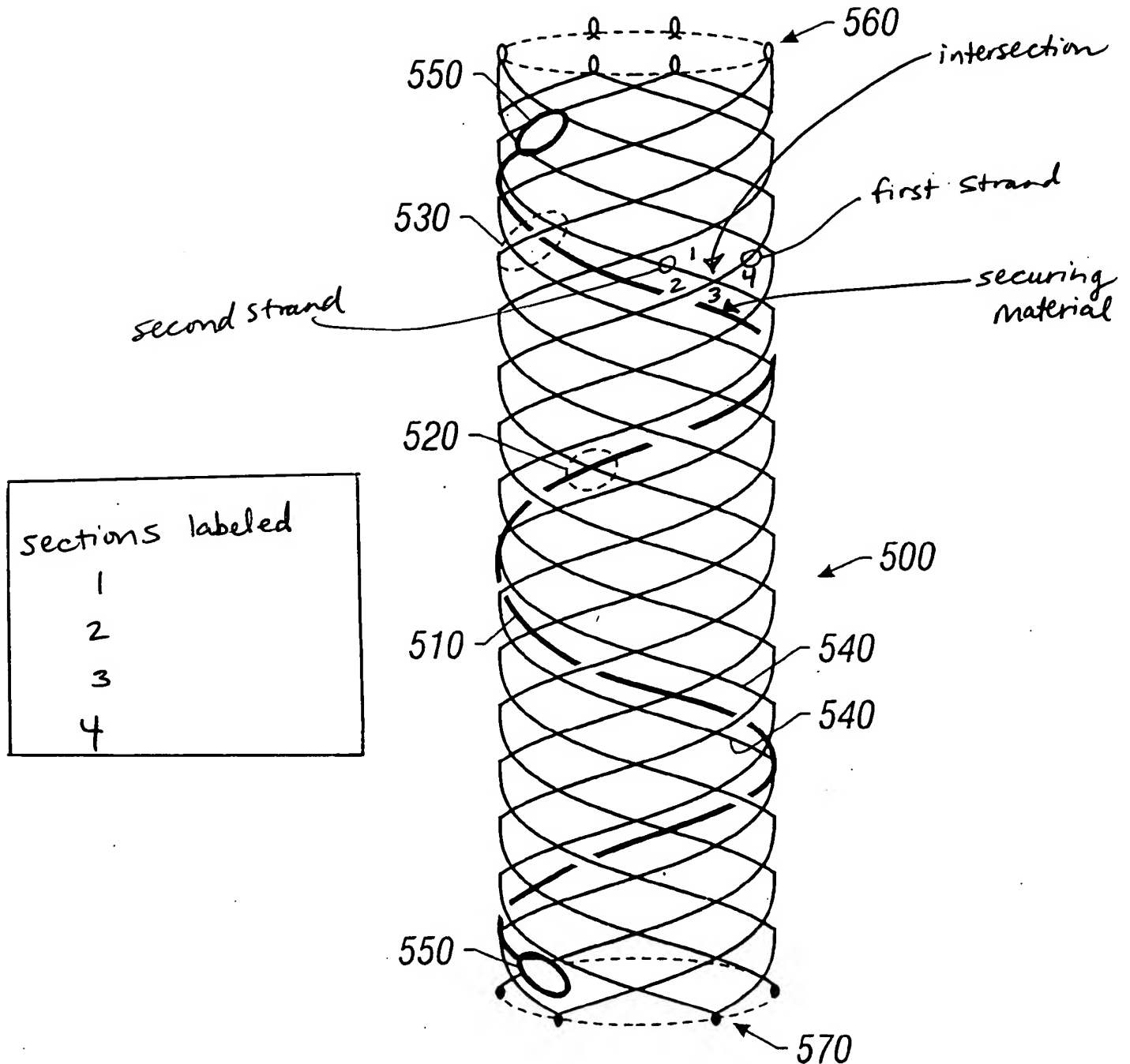


FIG. 28